



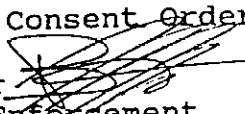
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 15 1993

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

MEMORANDUM

SUBJECT: Final RCRA §3008(h) Model Consent Order

FROM: Bruce M. Diamond, Director   
Office of Waste Programs Enforcement

TO: Waste Management Division Directors, Regions I-X  
Regional Counsel, Regions I-X

I am pleased to distribute to you the Final RCRA §3008(h) Model Consent Order. The National RCRA Model Order Workgroup has worked very hard to revise and update the Model Consent Order which was previously issued in January 1988.

The Order contains numerous revisions and clarifications of the standard consent order provisions. New provisions on definitions, stabilization, document certification, termination and satisfaction, alternative dispute resolution, and waste minimization have been developed. The revised Order also includes specific guidance for many of the sections including work to be performed, stipulated penalties, dispute resolution and force majeure. The Order should prove to be an effective enforcement document and a useful resource for corrective actions. Furthermore, I believe it is fair to the regulated community.

I would like to thank those of you who reviewed and commented on each of the earlier drafts of the Order. The Regional comments were carefully reviewed and have been incorporated or addressed in conference calls.

If you would like a copy of this Order on disk or if you have any questions about the Order, please contact Ellen Kandell, the workgroup chair at (202) 260-9315.

Attachment

cc: RCRA Enforcement Branch Chiefs, Regions I-X  
RCRA Enforcement Section Chiefs, Regions I-X  
Susan O'Keefe, OE, RCRA  
Model §3008(h) Order Workgroup Members



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MODEL RCRA §3008(h) CONSENT ORDER  
U.S. Environmental Protection Agency

December 15, 1993

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\* CONFIDENTIAL \*

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

REGION [Number]

IN THE MATTER OF:

[Name of Owner/Operator]

[Name, Address and  
EPA I.D. # of Facility],

RESPONDENT

ADMINISTRATIVE ORDER ON  
CONSENTU.S. EPA Docket No.  
[Number]

Proceeding under Section  
3008(h) of the Resource  
Conservation and Recovery  
Act, as amended, 42  
U.S.C. §6928(h).

[NOTE: All Orders must include provisions dealing with Jurisdiction, Findings of Fact, Conclusions of Law and Determinations, and the requirements of the Order itself. Each of these provisions will vary from Order to Order as discussed below. It is of utmost importance that you develop an Administrative Record that will support the facts alleged in the Order.<sup>1</sup>

See "Guidance on Administrative Records for RCRA 3008(h) Actions," Bruce M. Diamond, Glenn L. Unterberger, OSWER Directive 9940.4, July 6, 1989

All model order language is in plain type. Guidance and optional language, including notes and examples, are presented in bold type. Optional paragraphs appearing in the text of the Order are preceded by a "#" symbol.]

I. JURISDICTION

1. This Administrative Order on Consent ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as

<sup>1</sup>This Order is intended solely for the guidance of U.S. EPA enforcement personnel. It is not intended and cannot be relied on to create rights, substantive or procedural, enforceable by any party in litigation with the United States government. EPA officials may decide to follow the guidance provided in this document or to act at variance with the guidance. EPA may change this guidance at any time without public notice.

amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(h). The authority vested in the Administrator to issue orders under §3008(h) of RCRA has been delegated to the Regional Administrators by EPA Delegation Nos. 8-31 and 8-32 dated April 16, 1985, and has been further delegated by the Regional Administrator for Region [Number] to [Title].

[NOTE: Where possible add information in the paragraph below regarding legal description of the Facility, i.e., lot, block, or other streets bordering the Facility.]

2. This Order is issued to [corporate/individual name] Respondent, the owner/operator of [Name and address of Facility], ("the Facility").

3. Respondent consents to and agrees not to contest EPA's jurisdiction to issue this Order or to enforce its terms. Further, Respondent will not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent's full or interim compliance with the terms of this Order; or impose sanctions for violations of this Order.

## II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Order which are defined in RCRA or in regulations promulgated under RCRA shall have the definitions given to them in RCRA or in such regulations.

1. Acceptable, in the phrase "In a manner acceptable to EPA..." shall mean that submittals or completed work meet the terms and conditions of this Order, attachments, scopes of work, approved workplans and/or EPA's written comments and guidance documents.
2. Additional work shall mean any activity or requirement that is not expressly covered by this Order or its attachments but is determined by EPA to be necessary to fulfill the purposes of this Order as presented in Section\_\_: Statement of Purpose.
3. Administrative Record shall mean the record compiled and maintained by EPA supporting this Order. For information on the contents of the Administrative Record see "Guidance on Administrative Records for RCRA 3008(h) Actions," OSWER Directive 9940.4, July 6, 1989.
4. Area of Concern shall mean any area of the Facility under the control or ownership of the owner or operator where a release to the environment of hazardous waste(s) or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.

5. CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601, et seq.
6. Comply or compliance may be used interchangeably and shall mean completion of work required by this Order of a quality approvable by EPA and in the manner and time specified in this Order or any modification thereof, its attachments or any modification thereof, or written EPA directives. Respondent must meet both the quality and timeliness components of a particular requirement to be considered in compliance with the terms and conditions of this Order.
7. Contractor shall include any subcontractor, consultant or laboratory retained to conduct or monitor any portion of the work performed pursuant to this Order.
8. Corrective measures shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of hazardous waste or hazardous constituents into the environment.
9. Corrective Measures Implementation or CMI shall mean those activities necessary to initiate, complete, monitor, and maintain the remedies EPA has selected or may select to protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from the Facility. [The CMI requirements are detailed in the CMI Scope of Work included as Attachment [X].]
10. Corrective Measures Study or CMS shall mean the investigation and evaluation of potential remedies which will protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from the Facility. [The CMS requirements are detailed in the CMS Scope of Work included as Attachment [X].]
11. Data Quality Objectives shall mean the qualitative or quantitative statements, the application of which is designed to ensure that data of known and appropriate quality are obtained.
12. Day shall mean a calendar day unless expressly stated to be a business day. Business day shall mean a day other than a Saturday, Sunday, or Federal Holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the end of the next business day.
13. EPA or U.S. EPA shall mean the United States Environmental Protection Agency, and any successor Departments or Agencies of the United States.

14. Facility shall mean all contiguous property under the control of the owner and/or operator.
15. Hazardous Constituents shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264.
16. Hazardous Waste shall mean hazardous waste as defined in §1004(5) of RCRA or 40 C.F.R 260.10. This term includes hazardous constituents as defined above.
17. Innovative Treatment Technologies shall mean those technologies for treatment of soil, sediment, sludge, and debris other than incineration or solidification/stabilization and those technologies for treatment of groundwater contamination that are alternatives to pump and treat. Pump and treat in this instance refers to pumping with conventional treatments like air stripping and UV oxidation.
18. Interim measures or IM shall mean those actions, which can be initiated in advance of implementation of the final corrective action for a facility, to achieve the goal of stabilization. Interim Measures initiate cleanup at a facility and control or eliminate the release or potential release of hazardous wastes or hazardous constituents at or from the Facility.
19. Receptors shall mean those humans, animals, or plants and their habitats which are or may be affected by releases of hazardous waste or hazardous constituents from or at the Facility.
20. RCRA Facility Investigation or RFI shall mean the investigation and characterization of the source(s) of contamination and the nature, extent, direction, rate, movement, and concentration of the source(s) of contamination and releases of hazardous waste, including hazardous constituents, that have been or are likely to be released into the environment from the Facility. [The activities required for the RFI are detailed in the RFI Scope of Work included as Attachment [X].]
21. Solid Waste Management Unit or SWMU shall mean any discernible unit at which solid wastes have been placed at any time irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a Facility where solid wastes have been routinely and systematically released.
22. Scope of Work or SOW shall mean the outline of work Respondent must use to develop all workplans and reports required by this Order as set forth in this Order and its Attachments [specify name(s) and number(s)]. All SOW Attachments and modifications or amendments thereto, are



incorporated into this Order and are an enforceable part of this Order.

23. Stabilization shall mean the goal or philosophy of controlling or abating immediate threats to human health and/or the environment from releases and/or preventing or minimizing the spread of contaminants while long-term corrective measures alternatives are being evaluated.
24. Submittal shall include any workplan, report, progress report, or any other written document Respondent is required by this Order to send to EPA.
25. Violations of this Order shall mean those actions or omissions, failures or refusals to act by Respondent that result in a failure to meet the terms and conditions of this Order or its attachments.
26. Work or Obligation shall mean any activity Respondent must perform to comply with the requirements of this Order and its attachments.
27. Workplan shall mean the detailed plans prepared by Respondent to satisfy the requirements of the corresponding Scope of Work. The requirements for each workplan are presented in Section \_\_: Work to be Performed and/or the Attachment(s) [X].

### III. STATEMENT OF PURPOSE

[NOTE: EPA's policy is to encourage early stabilization at those facilities where it is possible. Therefore, most initial orders will cover stabilization only, not final remedy selection. However, the Model Order serves two purposes. It can be used for imposing only stabilization or for full, final remedy selection. Thus, the statement of purpose should tailor the objectives of the Order depending on its purpose.]

In entering into this Order, the mutual objectives of EPA and [Corporate/individual name] are: [Describe objectives of Order, e.g., (1) to perform Interim Measures ("IM") at the Facility to relieve threats to human health and/or the environment, (2) to perform a RCRA Facility Investigation ("RFI") to determine fully the nature and extent of any release of hazardous waste and/or hazardous constituents at or from the Facility; (3) to perform a Corrective Measures Study ("CMS") to identify and evaluate alternatives for the corrective measures necessary to prevent, mitigate, and/or remediate any releases of hazardous wastes or hazardous constituents at or from the Facility; (4) to implement the corrective measure or measures selected by EPA at the Facility; and (5) to perform any other activities necessary to correct or evaluate actual or potential threats to human health and/or the environment resulting from the

release or potential release of hazardous waste or hazardous constituents at or from the Facility.]

#### IV. PARTIES BOUND

1. This Order shall apply to and be binding upon EPA, Respondent and its officers, directors, employees, agents, successors and assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent.

2. No change in ownership or corporate or partnership status relating to the Facility will in any way alter Respondent's responsibility under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, shall not affect Respondent's obligations under this Order. Respondent will be responsible for and liable for any failure to carry out all activities required of Respondent by the terms and conditions of the Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform any such tasks.

3. Respondent shall provide a copy of this Order to all contractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within 14 days of the issuance of this Order or the retention of such person(s), whichever occurs later, and shall condition all such contracts on compliance with the terms of this Order.

4. Respondent shall give written notice of this Order to any successor in interest prior to transfer of ownership or operation of the Facility or a portion thereof and shall notify EPA in writing within [X] days prior to such transfer.

5. Respondent agrees to undertake all actions required by the terms and conditions of this Order, including any portions of this Order incorporated by reference. Respondent waives any rights to request a hearing on this matter pursuant to §3008(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing pursuant to §3008(b) of RCRA as a Consent Order issued pursuant to §3008(h) of RCRA.

#### V. FINDINGS OF FACT

1. Respondent is a person doing business in the State of [State].

2. Respondent is [a generator of hazardous waste and] an owner and/or operator of a hazardous waste management facility located at [location]. Respondent engaged in [treatment, storage, or disposal] of hazardous waste at the Facility subject to interim status requirements [40 C.F.R. Part 265] and [cite appropriate state statute or regulation if the State has been authorized pursuant to RCRA section 3006.] [Specify type of operation(s)--landfill, incinerator, etc.].

3. Respondent owned and/or operated the Facility as a hazardous waste management facility on or after November 19, 1980 (or the date of any statutory or regulatory change rendering the facility subject to the requirement to obtain a RCRA permit), the applicable date which renders facilities subject to interim status requirements or the requirement to have a permit under §§3004 and 3005 of RCRA.

4. Pursuant to §3010 of RCRA, Respondent notified EPA of its hazardous waste activity. In its notification dated [date], Respondent identified itself as a [generator of hazardous waste and/or an owner/operator of a treatment, storage, and/or disposal facility for hazardous waste].

5. In its [Name of Facility submission/notification or Part A permit application] dated [date], Respondent identified itself as handling the following hazardous wastes at the Facility:

[NOTE: The Order should identify the hazardous waste handled at the Facility, as well as the hazardous waste management units and solid waste management units. This information should help to establish a connection between the Respondent's activity and the release of hazardous waste and/or hazardous constituents. Where possible, specify waste codes that are contributing directly to the releases documented in the Findings of Fact. Examples of where this information might be obtained are: a Part A or Part B Application, Exposure Information Report, Inspection Report, RFA, or PA/SI.]

Examples of Wastes Handled:

(a) Hazardous wastes exhibiting the characteristics of ignitability, corrosivity, reactivity, or EP or TC toxicity identified at 40 C.F.R. §§261.20-261.24, (D001-D042);

(b) Hazardous wastes from non-specific sources identified at 40 C.F.R. §261.31, (F001-F028);

(c) Hazardous wastes from specific sources identified at 40 C.F.R. §261.32, (K001-K136);

(d) Commercial chemical products, manufacturing chemical intermediates, off-specification commercial chemical products, or manufacturing chemical intermediates identified at 40 C.F.R. §261.33(e), (P001-P123), or at 40 C.F.R. §261.33(f), (U001-U249).]

6. Respondent's Facility includes:

[NOTE: Describe location and units regulated under RCRA Subtitle C and other solid waste management units generally. All units at the facility should be identified, even if the Order only addresses a portion of the Facility. Note lack of liners on land disposal units. Attach a copy of a facility map from permit application, if available. Focus on and provide more detail on the unit(s) or area(s) where releases have occurred and which are the specific subject(s) of this Order. Include material relating to:

- Size of Facility
- Facility layout - legible map/schematic may be appropriate with groundwater monitoring wells indicated
- Number and type of units and operating status
- Specific current and past uses of different units

- Spill areas
- Specific wastes received or handled at specific units
- Geological conditions (keep brief)
- Groundwater flow conditions]

## 7. Documentation of Release

[NOTE: After having described the Facility, it is necessary to establish and document that a release of hazardous wastes or hazardous constituents from the Facility into the environment is occurring or has occurred. If you have identified action levels, you may wish to reference them to support the finding that ambient concentration levels have exceeded them. In addition, there needs to be a discussion that supports the premise of the Order that the response is necessary to protect human health and/or the environment.]

Sources of release information can be:

- Results of an inspection (RFA, CME, CEI)
- Respondent submittal of a groundwater assessment report
- Other data/information submitted by Respondent (e.g., Part B submittal, exposure information report) or developed by EPA (e.g., sampling analyses, §3007 letters, results of CERCLA PA/SI, responses to CERCLA §104(e))
- Knowledge of disposal into units not designed, constructed, or operated to prevent releases
- Data collected by Respondent pursuant to prior EPA or State enforcement action

[NOTE: Be sure to cite your references properly.]

[Example:

Groundwater monitoring wells have been installed at the Facility. Respondent has identified wells [number/identification code] as being up-gradient from [describe disposal unit(s)]. The location of the wells is shown in Figure [X] of Attachment [X]. Respondent has identified wells [number/identification code] as being down-gradient from [describe disposal unit(s)]. Samples of groundwater from these wells have been analyzed to determine contamination of groundwater. Samples were collected by EPA personnel from groundwater monitoring wells #8, #16, #24, #32. The results were as follows:

Well #	Sampling Date	Organics	Concentration
8	August 14, 1985	Phenol	4,000 ppm
16	August 17, 1985	Phenol	2,000 ppm
24	September 9, 1985	Phenol	3,200 ppm
32	September 9, 1985	Phenol	1,000 ppm

[NOTE: The chart should be concise, although multiple charts can be used if sufficient information is available. Only applicable data needed to support the Order should be included. Information such as chain of custody sheets, log analysis reports, and QA/QC reports should not be attached to the Order or referenced. However, these forms should be identified and maintained in the Administrative Record.

A facility map showing the location of wells, known spills, SWMUs, etc., will clarify allegations considerably. The map needs to be clear and appropriately dated. A legend to the map should make clear that in the event of a discrepancy, the definition of Facility will prevail over the description given by the map. Data other than groundwater data (e.g., soil and surface water) should be used if available. Such data should provide information comparable to that provided in the above table, i.e., medium sampled, location and dates of sampling, the substances found, and their concentrations. Further, Respondent's results can be used in lieu of or in addition to EPA's if they are deemed reliable.

Circumstantial evidence may also be used to provide additional support for the finding that there is or has been a release. Such evidence includes historical treatment, storage, or disposal practices; the nature and design of storage or disposal areas; and/or company admissions. Findings ordinarily will be more convincing if they are based on a combination of circumstantial and direct evidence.]

8. Hazardous wastes or hazardous constituents may further migrate from the Facility into the environment in the following pathways:

[NOTE: Often, little hydrogeologic data is available prior to the RFI/CMS study. If this information is available, you may want to link the release of hazardous wastes and/or hazardous constituents to human and/or environmental concerns. It is important to define migration pathways, noting and distinguishing between actual and potential receptors - human, wildlife, vegetation, etc. Wherever possible, cite documents in the Administrative Record.]

9. The hazardous wastes or hazardous constituents identified in paragraph seven above (may) pose(s) a threat to human health or the environment. [Describe carcinogenic/toxic properties.]

[NOTE: The Order is further strengthened by, and should include, a description of the toxic, carcinogenic, and hazardous properties of the contaminants. The Order should include health and environmental effects documentation and identify sources of information for the data described above, if available. An endangerment assessment is not needed to support the issuance of this Order.]

10. The Facility is located [describe residences, aquifers, domestic water supplies, surface water bodies (to include rivers/lakes and type of use), wells (include number and type of use), and fragile environment.]

11. Releases from the Facility (have/may/may have) migrate(d) toward [describe present and future potential and actual receptors].

## VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the foregoing findings of fact and after consideration of the Administrative Record, the Regional Administrator [or Division Director, if delegated] of EPA Region [Number], has made the following conclusions of law and determinations:

1. Respondent is a "person" within the meaning of Section 1004(15) of RCRA.

2. Respondent is (was) the owner or operator of a Facility that has operated, is operating, should be, or should have been operating under interim status subject to §3005(e) of RCRA.

3. Certain wastes and constituents found at the Facility are hazardous wastes and/or hazardous constituents pursuant to §§1004(5), 3001 of RCRA; 40 C.F.R. Part 261; and, Subpart S, §264.501, 55 Fed. Reg. 30874, July 27, 1990.

4. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Facility.

5. The actions required by this Order are necessary to protect human health and/or the environment.

#### VII. PROJECT COORDINATOR

1. Within [X] days of the effective date of this Order, EPA and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator it has selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Order and for designating a person to act in his/her absence. The EPA Project Coordinator will be EPA's designated representative for the Facility. To the maximum extent practicable, all communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Order shall be directed through the Project Coordinators.

2. The parties may change their Project Coordinator but agree to provide at least [X] days written notice prior to changing a Project Coordinator.

3. The absence of the EPA Project Coordinator from the Facility shall not be cause for the stoppage of work.

#### VIII. WORK TO BE PERFORMED

[NOTE: If this Order imposes only interim measures/stabilization upon Respondent, use only the language in Subsection A of Section VIII. If in addition to interim measures/stabilization this Order will address a RCRA Facility Investigation, Corrective Measures Study, and Corrective Measures Implementation, you should use Subsections A, B, C, and D of this Section.]

#### **Guidance**

The purpose of the "Work to be Performed" section of the Order is to provide the requirements and objectives for Interim Measures, RCRA Facility Investigation, Corrective Measures Study, and/or Corrective Measures Implementation. Facility-specific scope(s) of work should be referenced in and appended to the Order. The scope(s) of work should clearly describe

the tasks Respondent must implement. The Order should contain a detailed compliance schedule with milestones so disputes are minimized.

See the "RCRA Corrective Action Interim Measures," Interim Final, EPA/530/SW-88/029, OSWER Directive 9902.4, June 10, 1987; and "RCRA Corrective Action Plan (CAP)," Interim Final, EPA/530/SW-88/028, OSWER Directive 9902.3, June 1988; and any updated versions of these guidance documents or other relevant EPA guidance for detailed guidance and model language for developing these scope(s) of work. The CAP scopes of work should not be considered "boilerplate." The scopes of work in the CAP are models and should be modified based on facility specific situations.

EPA encourages the use of innovative technologies for interim measures and subsequent corrective measures. See "Furthering the Use of Innovative Treatment Technologies in OSWER Programs," OSWER Directive 9380.0-17, June 10, 1991. The use of these technologies may require treatability and pilot studies which should be described in applicable workplans.

EPA guidance that is relevant to the performance of the activities specified in this Section, should be identified by name, number or author, and date in Attachment [X] to the Order.

Pursuant to §3008(h) of RCRA, Respondent agrees to and is hereby ordered to perform the acts specified in this section, in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with, at a minimum: the attached Scope[s] of Work; the EPA-approved [Interim Measures Workplan, RCRA Facility Investigation Workplan, Corrective Measures Study Workplan, Corrective Measures Implementation Workplan,] and all other Workplans; RCRA and other applicable Federal laws and their implementing regulations; and applicable EPA guidance documents. Guidance may include, but is not limited to, documents listed in Attachment [X] to this Order, which are incorporated by reference as if fully set forth herein.

#### A. INTERIM MEASURES (IM) / STABILIZATION

1. Respondent shall evaluate available data and assess the need for interim measures, in addition to those specifically required by this Order. Interim measures shall be used whenever possible to achieve the initial goal of stabilization.

2. Respondent shall submit a Current Conditions Report to EPA in accordance with Section \_\_: Work to be Performed, RCRA Facility Investigation. The Current Conditions Report shall contain an assessment of previously implemented interim measures. The assessment must evaluate other Interim Measures alternatives that could be implemented at the Facility and identify any new data needed for making decisions on stabilization. EPA will review the Current Conditions Report and notify Respondent in writing of EPA's approval/disapproval or modification in accordance with Section \_\_: Agency Approvals/Proposed Contractor/Additional Work. EPA shall determine if additional data or information shall be collected. EPA will review Respondent's data and assessment and other information available to EPA, and if appropriate will select (an) interim measure(s) which Respondent shall perform. If deemed appropriate by EPA,

such selection may be deferred until additional data is collected.

#a. [Optional: include if IM workplan is required] Within [X] days of the effective date of this Order, Respondent shall submit to EPA a workplan for the implementation of interim measures [IM Workplan]. The IM Workplan is subject to approval by EPA and shall provide for the performance of all interim measures necessary to achieve stabilization at the facility in accordance with the Interim Measures Scope of Work appended as Attachment [X].

#b. [Optional: Include if specific interim measures are required in the workplan] The following interim measures shall be included in the IM Workplan: (e.g., place a temporary cover (specify material) over the containers in the areas (Identify areas) to prevent precipitation infiltration, control water running off the container area, prevent air emissions and isolate and contain contaminated wastes and volatiles. Respondent shall inspect the cover on a (specify period) basis, and shall maintain the cover until otherwise notified by EPA.)

3. In the event Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous constituents, or discovers new solid waste management units not previously identified, Respondent shall notify the EPA Project Coordinator, orally within 48 hours of discovery and notify EPA in writing within [X] days of such discovery summarizing the immediacy and magnitude of the potential threat(s) to human health and/or the environment. Upon written request of EPA, Respondent shall submit to EPA an IM Workplan in accordance with the IM Scope of Work, appended as Attachment [X]. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize Respondent to act prior to EPA's receipt of the IM Workplan.

4. If EPA identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous constituents, or discovers new solid waste management units not previously identified, EPA will notify Respondent in writing. Within [X] days of receiving EPA's written notification, Respondent shall submit to EPA an IM Workplan in accordance with the IM Scope of Work, that identifies interim measures which will mitigate the threat. If EPA determines that immediate action is required, the EPA Project Coordinator may orally require Respondent to act prior to Respondent's receipt of EPA's written notification.

5. All IM Workplans shall ensure that the interim measures are designed to mitigate immediate or potential threat(s) to human health and/or the environment, and should be consistent with the objectives of, and contribute to the performance of any long-term remedy which may be required at the Facility.

6. [Note: The Regions should determine which sections shall be required for submittal by Respondent.] In accordance with Attachment [X] herein, the IM Workplan shall include the following sections:

- Interim Measures Objectives



- Public Involvement Plan
- Data Collection Quality Assurance
- Data Management
- Design Plans and Specifications
- Operation and Maintenance
- Project Schedule
- Interim Measure Construction Quality Assurance
- Reporting Requirements.

7. Concurrent with the submission of an IM Workplan, Respondent shall submit to EPA a Health and Safety Plan in accordance with Attachment [X] of this Order.

#### B. RCRA FACILITY INVESTIGATION (RFI)

##### Guidance

The model RFI Scope of Work provided in the RCRA Corrective Action Plan should be modified based on Facility-specific conditions to foster timely, concise, and accurate submissions by Respondent.

Regions have the discretion to require that the RFI Workplan, Current Conditions Report, and the Preliminary Evaluation of Corrective Measure Technologies by Laboratory or Bench-Scale Studies be submitted separately or together.

Current Conditions Reports should supply EPA with information regarding the Facility background, nature and extent of contamination as currently defined, and the status of any interim measures implementation. In addition, the report should include an assessment of the applicability of any interim measures to stabilize any contaminants at the Facility.

The RFI and Corrective Measures Study (CMS) should not be viewed as totally distinct processes. Information from the RFI will form the bulk of the data and analyses used to support the CMS. Although it may not be possible to identify all data needed to support the CMS before or during the RFI, the EPA Project Coordinator should attempt to anticipate (and encourage Respondent to anticipate) CMS data needs.

1. Within [X] days of the effective date of this Order, Respondent shall submit to EPA a workplan for a RCRA Facility Investigation ("RFI Workplan") [a Current Conditions Report, and a Preliminary Evaluation of Corrective Measure Technologies by Laboratory or Bench-Scale Studies]. The RFI Workplan, [Current Conditions Report, and the Preliminary Evaluation of Corrective Measure Technologies by Laboratory or Bench-Scale Studies] is [are] subject to approval by EPA in accordance with Section \_\_\_\_: Agency Approvals/Proposed Contractor/Additional Work and shall be developed in a manner consistent with the RFI Scope of Work contained in Attachment [X].

[NOTE: Regions may either include within the body of the Order those technical requirements in the next paragraph that are applicable along with a more detailed discussion in the attached scopes of work, or include the applicable technical components in the attached scopes of work only.]

#. The RFI Workplan shall document the procedures and provide a specific schedule that the Respondent shall use to conduct those investigations necessary to:

- Characterize the environmental setting
- Characterize sources and nature of hazardous wastes and/or constituents
- Identify and characterize any contaminant plumes (e.g., LNAPL, DNAPL, dissolved)
- Characterize concentration, rate, and extent of contamination released from the facility
- Identify any additional SWMUs [AOCs]
- Collect data necessary to conduct a Risk Assessment

2. The RFI Workplan shall detail the methodology Respondent shall use to: (1) gather data needed to make decisions on stabilization during the early phase of the RFI; (2) identify and characterize all sources of contamination; (3) define the degree and extent of contamination; (4) characterize the potential pathways of contaminant migration; (5) identify actual or potential human and/or ecological receptors; and (6) support the development of alternatives from which a corrective measure will be selected by EPA. A specific schedule for implementation of all activities shall be included in the RFI Workplan.

3. [Note: The Regions should determine which sections shall be required for submittal by the Respondent.] In accordance with the provisions of Attachment [X] herein, the RFI Workplan shall include the following sections:

- Project Management
- Data Collection Quality Assurance
- Data Management
- Public Involvement Plan

4. Concurrent with the submission of an RFI Workplan, Respondent shall submit to EPA a Health and Safety Plan in accordance with Attachment [X] of this Order. If workplans for both an IM and RFI are required by this Order, Respondent may submit a single Health and Safety Plan that addresses the combined IM and RFI activities.

5. Respondent shall submit a RFI report to EPA for approval in accordance with the EPA approved RFI Workplan schedule. EPA will review the RFI report and notify Respondent in writing of EPA's approval/disapproval, or modification in accordance with Section \_\_: Agency Approvals/Proposed Contractor/Additional Work.

[NOTE: The following paragraph may be appropriate for complex corrective actions where there is an anticipated need for expanded public participation (e.g., organized public opposition to the Facility or the remediation plan). EPA should tailor this language to meet the specific needs of the concerned citizens. Other requirements besides the example in the paragraph below may be imposed on Respondent.]

#. The Public Involvement Plan shall, at a minimum, include (e.g., an assessment of community concerns, development of a fact sheet, and development of a mailing list.)

Guidance

EPA may require Respondent to keep the public informed of the corrective action activities. All Public Involvement Plans prepared by Respondent should be submitted to EPA for comment and approval prior to use. It is strongly recommended that EPA oversee Respondent's public involvement activities. Respondents must never appear to represent or appear to speak for EPA before the public, other government officials, or the media.

Activities that may be required of the Respondent include:

- Conducting an open house or informal meeting in a public location where people can talk to Agency officials and Respondent on a one-to-one basis.
- Preparing fact sheets summarizing current and/or proposed corrective action activities. All fact sheets should be reviewed by EPA prior to public distribution.
- Conducting scheduled site tours of the facility for media representatives, local officials, and citizens. It is recommended that an EPA representative accompany each site tour.
- Providing information in a foreign language to a predominantly non-English-speaking community.
- Maintaining an easily accessible repository (such as a town hall or public library) of information on the corrective action program, including the Order, approved workplan, and reports.

#### C. CORRECTIVE MEASURES STUDY (CMS)

1. Within [X] days of EPA's approval of the final RFI Report [or Respondent's receipt of a written request from EPA], Respondent shall submit a CMS Workplan to EPA in accordance with Section \_\_\_\_: Agency Approvals/Proposed Contractor/Additional Work. The CMS Workplan is subject to approval by EPA and shall be developed in a manner consistent with the CMS Scope of Work contained in Attachment [X] to this Order.

[NOTE: The following two paragraphs are optional. With paragraph "a" Regions may either include within the body of the Order those technical requirements in the next paragraph that are applicable along with a more detailed discussion in the attached scopes of work, or include the applicable technical components in the attached scopes of work only.]

#a. The CMS Workplan shall provide, at a minimum, the following information:

- A description of the general approach to the CMS and potential remedies;
- A statement of the overall objectives of the study;
- The specific plans for evaluating remedies to ensure compliance with Media Cleanup Standards(s) (MCS(s)) at the point(s) of compliance;
- The proposed format for the presentation of information; and
- A justification for each corrective measure that Respondent proposes to study to achieve the MCS(s).

#b. Respondent shall prepare treatability studies for all potential corrective measures that involve treatment except where Respondent can demonstrate to EPA's satisfaction that they are not needed. The CMS Workplan shall include, at a minimum, a summary of the proposed treatability study and conceptual design, and a schedule for submitting the treatability study workplan or Respondent's justification for not proposing a treatability study.

2. The CMS shall detail the methodology for developing and evaluating potential corrective measures to remedy any contamination at the facility. The CMS shall identify the potential corrective measures, including any innovative technologies, that may be used for the containment, treatment, and/or disposal of contamination.

3. Respondent shall submit a CMS Report to EPA for approval in accordance with the EPA approved CMS Workplan schedule. EPA will review the CMS Report and notify Respondent in writing of EPA's approval, disapproval or modification in accordance with Section \_\_: Agency Approvals/Proposed Contractor/Additional Work.

[NOTE: The following paragraph is optional. Regions can either include this language in the body of the Order and in the attached scopes of work, or include these technical requirements only in the attached scopes of work.]

#. The CMS Report shall contain, at a minimum, the following information for each corrective measure studied:

- An evaluation of any treatability studies performed
- An evaluation of the overall protectiveness of human health and of the environment
- Ability to attain the MCS(s) at the point(s) of compliance
- Ability to control the source(s) of release(s)
- An estimate and analysis of quantity, volume, and/or toxicity of the waste generated, including, but not limited to, contaminated soil, sludge, and groundwater
- Methods to minimize the volume, toxicity, and/or mobility of waste to be generated
- An assessment of how institutional and legal requirements including federal, State, or local environmental or public health standards, regulations, and/or ordinances will affect the design, operation, and timing of each corrective action alternative and how those legal requirements will be met
- An assessment of short-term and of long-term reliability and effectiveness, including, but not limited to, the methodology used to estimate the short-term and long-term reduction of toxicity, mobility, or volume of waste and the resulting estimate
- An evaluation of ease of implementation
- An estimate of the cost, including capital and annual operation and maintenance costs
- A recommendation as to which corrective measure(s), in Respondent's opinion, is [are] the most appropriate, and the rationale for such recommendation

4. In accordance with Section\_\_: Public Participation, EPA will provide the public with an opportunity to submit written

and/or oral comments and an opportunity for a public meeting regarding EPA's proposed cleanup standards and remedy for the facility.

#### D. CORRECTIVE MEASURES IMPLEMENTATION (CMI)

[NOTE: If CMI is not covered in this Order, you should use the language in paragraph 1a. If the CMI is covered in this Order, paragraphs 1b, 2, 3, 4 and 5 should be used.]

1a. After selection by EPA of the corrective measure(s), EPA may provide Respondent with an opportunity to negotiate an Administrative Order on Consent for implementation of such corrective measure(s). Nothing in this provision shall limit EPA's authority to require that the selected corrective measures be implemented or to take any other appropriate action under RCRA, CERCLA, or any other legal authority, including issuance of a Unilateral Administrative Order or the filing of a civil action seeking a judicial order directing Respondent to implement the selected corrective measure(s).

1b. Within [X] days of Respondent's receipt of notification of EPA's selection of the corrective measure(s), Respondent shall submit to EPA a Corrective Measures Implementation Workplan ["CMI Workplan"]. The CMI Workplan is subject to approval by EPA in accordance with Section \_\_\_\_: Agency Approvals/Proposed Contractor/Additional Work and shall be developed in a manner consistent with the CMI Scope of Work incorporated herein and contained in Attachment [X].

2. [Note: The Regions should determine which sections shall be required for submittal by the Respondent.] The CMI Workplan shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the facility. In accordance with Attachment [X] herein, the CMI Workplan shall also include the following sections:

- Program Management
- Public Involvement Plan
- Design Plans and Specifications
- Operation and Maintenance
- Cost Estimate
- Project Schedule
- Construction Quality Assurance
- Data Collection Quality Assurance
- Data Management.

3. Concurrent with the submission of a CMI Workplan, Respondent shall submit to EPA a CMI Health and Safety Plan in accordance with Attachment [X].

4. EPA will review the CMI Workplan and notify Respondent in writing of EPA's approval/disapproval, or modification in accordance with Section \_\_\_\_: Agency Approvals/Proposed Contractor/Additional Work.

5. Respondent shall submit a CMI report to EPA in accordance with the EPA approved CMI workplan schedule. EPA will review the CMI report and notify Respondent of EPA's approval, disapproval or modification in accordance with Section \_\_\_\_: Agency Approvals/Proposed Contractor/Additional Work.

#### **E. WASTE MINIMIZATION PLAN (OPTIONAL)**

##### **Guidance**

EPA advocates the use of waste minimization. However, any provision for waste minimization should be included as an addition to the required corrective action at the Facility. Inclusion of waste minimization requirements in a §3008(h) order does not allow for a reduction in the scope of a facility's corrective action investigation and remediation activities nor a mitigation of any penalty. Information on the use of waste minimization can be found in the Office of Enforcement's "Interim Policy on the Inclusion of Pollution Prevention and Recycling Provisions in Enforcement Settlements," James M. Strock, February 25, 1991.

Moreover, it is important to include language requiring the Respondent to assess and revise the effectiveness of the Plan any time there is a process change in the Respondent's operation.

1. Within [X] days of the effective date of this Order, Respondent shall submit to EPA for review and comment a plan to minimize the generation of hazardous waste at the Facility (the "Waste Minimization Plan" or "Plan"). This Plan shall be developed consistent with the scope of work for a Waste Minimization Plan contained in Attachment [X] and shall describe procedures to minimize the volume, mobility and/or toxicity of hazardous waste generated at the facility.

2. Within [X] days after receipt of EPA comments on the draft Waste Minimization Plan, to the extent practicable Respondent shall submit to EPA a revised Plan addressing EPA's comments. Concurrent with such submission, Respondent shall implement the Waste Minimization Plan, as revised, in accordance with the requirements and schedule contained therein.

3. Respondent shall review, assess the effectiveness of, and revise the Waste Minimization Plan, to the extent reasonable and appropriate, on an annual basis in order to further reduce the volume, mobility, and/or toxicity of the hazardous waste generated at the Facility. During the effective life of this Order, Respondent shall submit an annual Waste Minimization Report to EPA. Such Waste Minimization Report shall be prepared and submitted to EPA by March 1 of each year and shall include: an assessment of the effectiveness of Respondent's existing Plan; a description of the changes in volume, mobility, and toxicity of waste actually achieved during the year in comparison to previous years; a description of areas where potential improvements in waste minimization at the Facility may be achieved; a copy of all revisions to the Waste Minimization Plan; an explanation and description of how such revision(s) have enabled the Respondent to further minimize the volume, mobility, and/or toxicity of the hazardous waste generated at the Facility; and any anticipated revisions to the Plan along with the projected changes in volume, mobility, and/or toxicity of the waste generated as a result of implementing such revision(s).

#### **IX. PUBLIC PARTICIPATION AND COMMENT IN CORRECTIVE MEASURE(S) SELECTION**

1. EPA will provide the public with an opportunity to review and comment on the final draft of the Corrective Measures Study Report and a description of EPA's proposed corrective

measure(s), including EPA's justification for proposing such corrective measure(s) (the "Statement of Basis").

2. Following the public comment period, EPA may approve the Corrective Measures Study Report and select a final corrective measure(s) or require Respondent to revise the Report and/or perform additional corrective measures studies.

3... EPA will notify Respondent of the final corrective measure selected by EPA in the Final Decision and Response to Comments ("RTC"). The notification will include EPA's reasons for selecting the corrective measure.

#### **Guidance**

After the CMS has been performed by the Respondent and EPA has proposed in the Statement of Basis ("SB") that a particular corrective measure(s) be implemented, it is EPA's policy to request public comment on the Administrative Record and the proposed corrective measure. Changes to the proposed corrective measure(s) may be made after consideration of public comment. EPA may also require that Respondent perform additional corrective measures studies. If the public is interested, a public meeting may be held. After consideration of the public's comments on the proposed corrective measure, the Agency develops the Final Decision and Response to Comments (RTC) to document the selected corrective measure, EPA's justification for such selection, and EPA's response to the public's comments. Additional public involvement activities may be advisable, based on facility specific circumstances. See "Guidance for Public Involvement in RCRA Section 3008(h) Actions," OSWER Directive 9901.3, May 5, 1987, and "RCRA Corrective Action Decision Documents: The Statement of Basis and Response to Comments," OSWER Directive 9902.6, April 1991.

This section of the Order retains EPA's commitment to provide the public with the opportunity to review and comment on EPA's proposed selection of a corrective measure and the Respondent's duty to undertake additional corrective measures studies should EPA determine it necessary. A time frame of 30 to 45 days is recommended for public comment and review of a proposed corrective measure. Regions are not required to specify the time period for the public review and comment in the agreements negotiated with the Respondent. If Respondent is concerned that it will not have an opportunity to comment on the proposed corrective measure, negotiators may point out that, at a minimum, as a member of the public, Respondent will have an opportunity to review and comment on EPA's proposed corrective measure.

Generally, a second corrective action order is negotiated and issued to implement the selected corrective measure.

#### **X. AGENCY APPROVALS/PROPOSED CONTRACTOR/ ADDITIONAL WORK**

[NOTE: Paragraphs 1 through 6 cover the submission by Respondent and approval by EPA of workplans and reports, and the Agency's right to approve or disapprove of work that is performed. Regions may wish to ask for data, reports, and maps in hard copy and on diskette.]

##### **A. EPA APPROVALS**

1. EPA will provide Respondent with its written approval, approval with conditions and/or modifications, disapproval, or

disapproval with comments, for any workplan, report (except progress reports), specification, or schedule submitted pursuant to or required by this Order. EPA will provide a statement of reasons for any approval with conditions and/or modifications, disapproval or disapproval with comments.

2. Respondent shall revise any workplan, report, specification, or schedule in accordance with EPA's written comments. Respondent shall submit to EPA any revised submittals in accordance with the due date specified by EPA. Revised submittals are subject to EPA approval, approval with conditions and/or modifications, disapproval, or disapproval with comments.

3. Upon receipt of EPA's written approval, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

4. Any EPA approved report, workplan, specification, or schedule shall be deemed incorporated into this Order. Prior to this written approval, no workplan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

#### B. PROPOSED CONTRACTOR/CONSULTANT

5. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer, hydrologist, geologist, or environmental scientist, with expertise in hazardous waste cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible. Within 14 days of the effective date of this Order, Respondent shall notify the EPA Project Coordinator in writing of the name, title, and qualifications of the engineer, hydrologist, geologist, or environmental scientist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Order. Respondent shall identify whether any contractor is on the List of Parties Excluded from Federal Procurement or Non-Procurement Programs. EPA reserves the right to disapprove Respondent's contractor and/or consultant at any time during the period that this Order is effective. If EPA disapproves a contractor or consultant, then Respondent must, within [X] days of receipt from EPA of written notice of disapproval, notify EPA, in writing, of the name, title, and qualifications of any replacement. EPA's disapproval shall not be subject to review under Section\_\_: Dispute Resolution.

[NOTE: The list referred to in the paragraph above is updated monthly and is available from the Superintendent of Documents, U.S. General Services Administration. Call 202-783-3238 or to access the list electronically call Natalie Jones at 202-501-3566 or Priscilla Owens at 202-501-4740. Therefore, Respondent should make sure they consult the current list.]



### C. ADDITIONAL WORK

[NOTE: Under certain circumstances, new findings may indicate that additional work must be done to protect human health and/or the environment.]

6. EPA may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any EPA-approved workplan, when such additional work is necessary to meet the purposes set forth in Section \_\_\_\_: Statement of Purpose. If EPA determines that Respondent shall perform additional work, EPA will notify Respondent in writing and specify the basis for its determination that the additional work is necessary. Within [X] days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a workplan for the additional work. EPA will specify the contents of such workplan. Such workplan shall be submitted within [X] days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a workplan by EPA, Respondent shall implement it in accordance with the schedule and provisions contained therein.

### XI. QUALITY ASSURANCE

1. Respondent shall follow EPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control ("QA/QC") and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in approved workplans must be approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report (e.g., RFI).

2. The name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable workplan(s).

3. All workplans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

4. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition as amended by Update One, July 1992), or other methods deemed satisfactory to

EPA. If methods other than EPA methods are to be used, Respondent shall specify all such protocols in the applicable workplan (e.g., RFI). EPA may reject any data that does not meet the requirements of the approved workplan or EPA analytical methods and may require resampling and additional analysis.

5. Respondent shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA. EPA may conduct a performance and QA/QC audit of the laboratories chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, resampling and additional analysis may be required.

## XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

[NOTE: Facility-specific sampling and analysis requirements must be included in the Order.]

1. Respondent shall submit to EPA upon request the results of all sampling and/or tests or other data generated by divisions, agents, consultants, or contractors pursuant to this Order.

2. Notwithstanding any other provisions of this Order, the United States retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under RCRA, CERCLA, and any other applicable statutes or regulations.

3. Respondent shall notify EPA in writing at least [X] days prior to beginning each separate phase of field work approved under any workplan required by this Order. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from the EPA Project Coordinator or, if the EPA Project Coordinator is unavailable, his/her Section Chief, to commence such activities immediately. At the request of EPA, Respondent shall provide or allow EPA or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, EPA shall allow Respondent or its authorized representative(s) to take split or duplicate samples of all samples collected by EPA under this Order.

4. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Order. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R. §2.204(e)(4) or such claim shall be deemed waived. Information determined by EPA to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2. If

no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to Respondent. Respondent agrees not to assert any confidentiality claim with regard to any physical or analytical data.

### XIII. ACCESS

[NOTE: Provisions requiring the Respondent to give EPA and its designated representatives access to the facility and to relevant records should be included in the Order. Such provisions should also set forth, as deemed necessary, the Respondent's responsibilities with respect to gaining access to third party property. Documentation of efforts to obtain access to any properties should be included as a task in the workplan if off-site activities are necessary for completion of any tasks required pursuant to the Order.]

1. EPA, its contractors, employees, and/or any duly designated EPA representatives are authorized to enter and freely move about the Facility pursuant to this Order for the purposes of, inter alia: interviewing Facility personnel and contractors; inspecting records, operating logs, and contracts related to the facility; reviewing the progress of Respondent in carrying out the terms of this Order; conducting such tests, sampling, or monitoring as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to EPA by Respondent. Respondent agrees to provide EPA and its representatives access at all reasonable times to the Facility and subject to paragraph 2 below, to any other property to which access is required for implementation of this Order. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Order and that are within the possession or under the control of Respondent or its contractors or consultants.

2. To the extent that work being performed pursuant to this Order must be done beyond the Facility property boundary, Respondent shall use its best efforts to obtain access agreements necessary to complete work required by this Order from the present owner(s) of such property within [30] days of the date that the need for access becomes known to Respondent. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owner(s) of such property requesting access agreement(s) to permit Respondent and its authorized representatives to access such property, and the payment of reasonable compensation in consideration of granting access. Any such access agreement shall provide for access by EPA and its representatives. Respondent shall insure that EPA's Project Coordinator has a copy of any access agreement(s). In the event that agreements for access are not obtained within [30] days of approval of any workplan for which access is required, or of the date that the need for access became known to Respondent, Respondent shall notify EPA in writing within [14] days thereafter of both the efforts undertaken to obtain access and

the failure to obtain access agreements. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access, Respondent shall undertake EPA-approved work on such property.

3. The Respondent agrees to indemnify the United States as provided in Section \_\_\_\_: Indemnification, for any and all claims arising from activities on such property.

4. Nothing in this section limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

5. Nothing in this section shall be construed to limit or otherwise affect Respondent's liability and obligation to perform corrective action including corrective action beyond the facility boundary, notwithstanding the lack of access.

#### XIV. RECORD PRESERVATION

1. Respondent shall retain, during the pendency of this Order and for a minimum of 6 years after its termination, all data, records, and documents now in its possession or control or which come into its possession or control which relate in any way to this Order or to hazardous waste management and/or disposal at the facility. Respondent shall notify EPA in writing 90 days prior to the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Order and shall be addressed to:

[Name], Director  
Waste Management Division  
US EPA, Region [Number]  
Address

2. Respondent further agrees that within 30 days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Order, Respondent will enter into an agreement with any such agents, consultants, or contractors whereby such agents, consultants, and/or contractors will be required to provide Respondent a copy of all documents produced pursuant to this Order.

3. All documents pertaining to this Order shall be stored by the Respondent in a centralized location at the Facility to afford ease of access by EPA or its representatives.

#### XV. REPORTING AND DOCUMENT CERTIFICATION

1. Beginning with the first full month following the effective date of this Order, and throughout the period that this

false information, including the possibility of fine and imprisonment for knowing violations."

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

1. Unless there has been a written modification by EPA of a compliance date, a written modification by EPA of an approved workplan condition, or excusable delay as defined in Section \_\_: Force Majeure and Excusable Delay, if Respondent fails to comply with any term or condition set forth in this Order in the time or manner specified herein, Respondent shall pay stipulated penalties as set forth below upon written demand from EPA.

- a. For failure to commence, perform, and/or complete field work in a manner acceptable to EPA or at the time required pursuant to this Order: [\$] per day for the first seven days of such violation, [\$] per day for the eighth through twenty-first day of such violation, and [\$] per day for each day of such violation thereafter;
- b. For failure to complete and submit any workplans or reports (other than progress reports) in a manner acceptable to EPA or at the time required pursuant to this Order, or for failure to notify EPA of immediate or potential threats to human health and/or the environment, new releases of hazardous waste and/or hazardous constituents and/or new solid waste management units not previously identified, as required by this Order: [\$] per day for the first seven days of such violation, [\$] per day for the eighth through twenty-first day of such violation, and [\$] per day for each day of such violation thereafter;
- c. For failure to complete and submit, other written submittals not included in paragraph 1.b. of this section in a manner acceptable to EPA or at the time required pursuant to this Order: [\$] per day for the first seven days of such violation, [\$] per day for the eighth through twenty-first day of such violation, and [\$] per day for each day of such violation thereafter;
- d. For failure to comply with any other provisions of this Order in a manner acceptable to EPA: [\$] per day for the first seven days of such violation, [\$] per day for the eighth through twenty-first day of such violation, and [\$] per day for each day of such violation thereafter.

2. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Order. Penalties shall continue to accrue regardless of whether EPA has notified the Respondent of a violation.

3. All penalties owed to the United States under this Section shall be due and payable within 30 days of the Respondent's receipt from EPA of a written demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section\_\_: Dispute Resolution. Such a written demand will describe the violation and will indicate the amount of penalties due.

4. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first day after Respondent's receipt of EPA's demand letter. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days.

5. All penalties shall be made payable by certified or cashier's check to the United States of America and shall be remitted to:

U.S. Department of the Treasury  
Attention: EPA Region [Number], Office of the Comptroller  
[Insert appropriate lockbox depository address for RCRA  
payments]  
Pittsburgh, PA 15251

All such checks shall reference the name of the Facility, the Respondent's name and address, and the EPA docket number of this action. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the EPA Project Coordinator.

6. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section\_\_: Dispute Resolution. The stipulated penalties in dispute shall continue to accrue, but need not be paid, during the dispute resolution period. Respondent shall pay stipulated penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondent shall submit such payment to EPA within 7 days of receipt of such resolution in accordance with Paragraph 5 of this Section.

7. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this Order.

8. The stipulated penalties set forth in this section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms and conditions of this Order.

9. No payments under this section shall be tax deductible for federal tax purposes.

#### **Guidance**

It is EPA policy to require stipulated penalties in all RCRA §3008(h) Consent Orders to ensure that Respondent complies with all terms and conditions of the Order. Stipulated penalties are penalties that Respondent agrees to pay for violating any Order provision.

To achieve the objective of compliance with Consent Orders, Regions should closely monitor the Orders and immediately assess stipulated penalties when violations occur. Compliance is achieved when all requirements of the Order are satisfied.

The stipulated penalty guidance presented below is intended to aid those involved with drafting and negotiating RCRA §3008(h) Orders. This guidance does not alter the discretion each Region may exercise in negotiating Orders.

#### **1. Alternative Stipulated Penalty Language**

##### **(a) Single Penalty Approach**

The stipulated penalty language included in the Order categorizes potential penalties based on the type of violation. For example, there is one penalty amount for failure to submit an acceptable workplan to EPA on schedule and another amount for failure to commence, perform, and/or complete field work as required in the Order. Regions preferring to have a single penalty schedule for any violation of the Order should consider the following language instead of paragraphs 1.a. through 1.d in the Order.

<b>Period of Violation</b>	<b>Penalty Per Violation Per Day</b>
<b>First 7 days</b>	<b>[\$]</b>
<b>8th day through 21st day</b>	<b>[\$]</b>
<b>Each day thereafter</b>	<b>[\$]</b>

##### **(b) Identification of Field Work Tasks**

Paragraph 1.a. of this section of the Order addresses the failure to "commence, perform, and/or complete field work" in a manner acceptable to EPA or at the time required by the Order. For those Regions that would prefer to list and schedule the individual field work tasks that must be completed, the following language may be substituted for paragraph 1.a.:

- a. For failure to commence, perform, and/or complete the field work tasks listed below in a manner acceptable to EPA or at the time required pursuant to this Order: [\$] per day for the first seven days of such violation, [\$] per day for the eighth through twenty-first day of such violation, and [\$] per day for each day of such violation thereafter;

Regions should list major milestones and field work tasks. Examples include, but are not limited to, the following:

- Begin RFI field work.
- Conduct surface soil sampling.
- Install groundwater monitoring wells.
- Begin pump tests of monitoring well network.
- Conduct monitoring well sampling.
- Begin installation of a pump and treat system as an interim measure.

## 2. Negotiating Stipulated Penalties

The penalty amounts Regions negotiate should be sufficient to deter violations of the Order. The following principles should be considered when negotiating stipulated penalty time frames and amounts:

- a. Higher stipulated penalties are favored because of their deterrent effect. These higher amounts are considered reasonable because there are provisions in the Order for force majeure events which may excuse unforeseen events. Additionally, compliance is under the Respondent's control and if delays are anticipated, the Respondent may seek modifications of the deadlines pursuant to Section 1: Modification.

Consider the facility's compliance history when negotiating penalty amounts. If Respondent has a record of previous violations, a higher stipulated penalty may be necessary to deter future violations. According to §3008(h)(2) of RCRA, EPA can assess and Respondent is liable to the United States for up to \$25,000 per day in civil penalties for violating an Order.

- b. The burden is always on Respondent to justify lower stipulated penalties than what EPA has proposed in the initial draft Order.
- c. There should be higher stipulated penalty amounts set for the most important requirements of the Order. For example, workplans and reports are more important than some other submittals and should have higher stipulated penalties.
- d. Stipulated penalties should have an escalating schedule in which the stipulated penalty increases with the length of the violation. For example, violations of up to seven days might have stipulated penalties of \$5,000 per day while violations from the eighth to twenty-first days might have stipulated penalties of \$8,000 per day, and so on.

## 3. Setting Stipulated Penalty Amounts

The following range of time frames and penalty amounts are given as a guide to negotiators. Each Region has the discretion to set whatever time frames and stipulated penalty amounts deemed applicable to deter violations of the Order.

- a. For failure to commence, perform, and/or complete field work in a manner acceptable to EPA or at the time required pursuant to this Order: [\$] per day for the first seven days of such violation, [\$] per day for the eighth through twenty-first day of such violation, and [\$] per day for each day of such violation thereafter;

Time Frame

Suggested Range



1 - 7 days:	\$2,000 - \$5,000 per day
8 - 21 days:	\$5,000 - \$8,000 per day
Each day	
Thereafter:	\$8,000 - \$12,000 per day

- b. For failure to complete and submit any workplans or reports (other than progress reports) in a manner acceptable to EPA or at the time required pursuant to this Order or for failure to notify EPA of immediate or potential threats to human health and/or the environment, new releases of hazardous waste and/or hazardous constituents and/or new solid waste management units not previously identified as required by this Order: [\$] per day for the first seven days of such violation, [\$] per day for the eighth through twenty-first day of such violation, and [\$] per day for each day of such violation thereafter;

Time Frame	Suggested Range
1 - 7 days:	\$2,000 - \$5,000 per day
8 - 21 days:	\$5,000 - \$8,000 per day
Each day	
Thereafter:	\$8,000 - \$12,000 per day

- c. For failure to complete and submit other written submittals not included in paragraph 1.b. of this section in a manner acceptable to EPA or at the time required pursuant to this Order: [\$] per day for the first seven days of such violation, [\$] per day for the eighth through twenty-first day of such violation, and [\$] per day for each day of such violation thereafter;

Time Frame	Suggested Range
1 - 7 days:	\$1,000 - \$2,500 per day
8 - 21 days:	\$2,500 - \$3,500 per day
Each day	
Thereafter:	\$3,500 - \$5,000 per day

Examples of paragraph c. violations include, but are not limited to, the following:

- Failure to submit progress reports on schedule.
- Failure to notify EPA of Project Coordinator selection.
- Failure to notify EPA of selected consultant in a timely manner.
- Failure to notify EPA prior to initiating field work.

- d. For failure to comply with any other provisions of this Order in a manner acceptable to EPA: [\$] per day for the first seven days of such violation, [\$] per day for the eighth through twenty-first day of such violation, and [\$] per day for each day of such violation thereafter.

Time Frame	Suggested Range
1 - 7 days:	\$1,000 - \$2,500 per day
8 - 21 days:	\$2,500 - \$3,500 per day
Each day	
Thereafter:	\$3,500 - \$5,000 per day

Examples of paragraph d. violations include, but are not limited to, the following:

- Failure to preserve records as required in the order.
- Failure to provide a copy of the Order to all contractors, laboratories, and consultants.
- Failure to provide written notice to any successor in interest prior to transfer of ownership or operation of the facility.

If using the alternative stipulated penalty language in paragraph 1(a) of this guidance section, use the following suggested range for setting penalties:

Period of Violation	Penalty Per Violation Per Day
First 7 days	\$2,000 - \$5,000
8th day through 21st day	\$5,000 - \$8,000
Each day thereafter	\$8,000 - \$12,000

#### 4. Legal Issues

##### a. Right to Judicial Review

The right to judicial review of EPA actions in the implementation of RCRA §3008(h) Orders is routinely a concern of Respondents. It is EPA's position that no right to judicial review exists until such time as the Agency commences a judicial action against Respondent. This concept applies to the accrual and demand for payment of stipulated penalties.

##### b. Double Payment

A common concern of Respondents is that EPA may collect stipulated penalties and then pursue a separate judicial action to collect further penalties for the same violation. EPA has the right to pursue any and all actions necessary to enforce the Order. If justified by Respondent this issue may be addressed by adding the following penalty offset language to paragraph eight:

However, all stipulated penalties which are paid by Respondent may be off-set against any and all penalties for the same violation which EPA may be entitled to collect as a result of other enforcement action.

##### c. Excused Stipulated Penalties

In general, stipulated penalties should never be excused unless there is an excusable delay as defined in Section \_\_: Force Majeure and Excusable Delay. In rare unforeseeable circumstances, however, the equities of a case may indicate that EPA should recalculate the amount it agrees to assess or exercise prosecutorial discretion by declining to proffer a demand for stipulated penalties for minor violations of an Order.

##### d. Acceptability of Submittals

Paragraph 1 of the model stipulated penalty language states that stipulated penalties apply to work that is "not completed in a manner acceptable to EPA or is not submitted within the specified time schedules approved under this Order." Not completed in a manner acceptable to EPA means that Respondent has not produced a submittal or completed work that meets the terms and conditions of the Order, attachments, scopes of work, approved workplans and/or EPA's written comments and applicable guidance documents. It is understood that major submittals (except progress reports) required by the Order will probably need some revision prior to approval. However, if Respondent provides unacceptable submittals and fails to adequately address EPA comments, stipulated penalties should be assessed.

**e. Interest on Delinquent Stipulated Penalty Payments**

An unpaid stipulated penalty is considered an out-standing debt to the U.S. Government. Pursuant to 31 U.S.C. §3717(a), EPA is entitled and obligated to collect interest on any outstanding debts such as unpaid stipulated penalties. The rate of interest is established by the Secretary of Treasury and is known as the Current Value of Funds Rate. Each EPA Region has a Financial Management Officer that can provide the existing Current Value of Funds Rate.

EPA is also entitled to collect additional interest as a penalty amount for payments which are greater than 90 days delinquent. The authority for delinquent payments is found in 37 U.S.C. §3717(e), 4 C.F.R. §§101.1, 102.12(d), (e) and 40 C.F.R. 13.11(b) and (c). EPA has established the additional penalty at the maximum allowed rate of 6% per annum.

**5. Regional Financial Management**

If the Region issues a demand letter for stipulated penalties, copies of the demand letter and the Order should be sent to the Regional Financial Management Officer so that an accounts receivable may be established for the expected penalty payment.

**6. Dispute Resolution Decisions**

Dispute resolution decisions that require payment of stipulated penalties and interest should be clearly written. The decision should indicate the exact amount of the penalty, how the penalty was calculated, and when the payment is due.

**7. Other Guidance**

- a. "Guidance on the Use of Stipulated Penalties in Hazardous Waste Consent Decrees," Thomas L. Adams, Jr., September 21, 1987.
- b. "Use of Stipulated Penalties in EPA Settlement Agreements," James M. Strock, January 24, 1990.

**XVII. DISPUTE RESOLUTION**

1. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this section are the sole procedures for resolving disputes arising under this Order. If Respondent fails to follow any of the requirements contained in this section then it shall have waived its right to further consideration of the disputed issue.

2. If Respondent disagrees, in whole or in part, with any written decision ("Initial Written Decision") by EPA pursuant to this Order, Respondent's Project Coordinator shall notify the EPA Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objections in writing. Respondent's written objections must be directed to the EPA Project Coordinator [and may be copied to

(specify appropriate management level)]. This written notice must be mailed to such person(s) within [X] days [suggest 14 days] of Respondent's receipt of the Initial Written Decision. Respondent's written objection must set forth the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination.

4. EPA and Respondent shall have [X] days [suggest 14 days] from EPA's receipt of Respondent's written objections to attempt to resolve the dispute through formal negotiations. This time period may be extended by EPA for good cause. During such time period, ("Negotiation Period") Respondent may request a conference with (specify appropriate management title) to discuss the dispute and Respondent's objections. EPA agrees to confer in person or by telephone to resolve any such disagreement with the Respondent as long as Respondent's request for a conference will not extend the Negotiation Period.

5. If the parties are unable to reach an agreement within the Negotiation Period, Respondent has the right to submit any additional written arguments and evidence, not previously submitted, to the decision maker (the official who has delegated authority to make final decisions on Orders). Based on the record, EPA shall provide to Respondent its written decision on the dispute ("EPA Dispute Decision") which shall include a response to Respondent's arguments and evidence. Such decision shall be incorporated into and become an enforceable element of this Order, but will not be considered final Agency action for purposes of judicial review.

6. Except as provided in Section \_\_: Delay in Performance/Stipulated Penalties, the existence of a dispute as defined in this section and EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Order during the pendency of the dispute resolution process.

#### Guidance

U.S. EPA strongly encourages its Project Coordinators to resolve disputes with Respondents informally since the informal process saves resources, expedites implementation of the corrective action program, and resolves issues at the level where knowledge of the facility and of the site specific impact of the resolution is the greatest. Consequently, the Order places primary emphasis on informal dispute resolution between the Project Coordinators.

U.S. EPA recognizes, however, that not all issues may be resolved by informal discussions between the Project Coordinators. Consequently, the Order outlines a process for formal dispute resolution. This process involves formal negotiation of the dispute and an opportunity for review and discussion of a dispute with a designated EPA management official. It is important to note that the EPA Dispute Decision must be signed by the official who has delegated authority to sign the initial Order.

The EPA Dispute Decision and any written agreement reached by the parties to resolve the dispute shall be incorporated into this Order. It shall be attached to the Order as an appendix.

In addition, Regions in their own discretion may decide that use of Alternative Dispute Resolution (ADR) is suitable for certain issues in a particular RCRA §3008(h) order. If the Region so decides, then the following language should be considered.

**Sample ADR language:**

[NOTE: When appropriate, this provision should be inserted after paragraph six (6) above and the second sentence of paragraph five (5) should be deleted.]

7. Respondent may request mediation within 5 days of issuance of the EPA Dispute Decision if such decision involves a mediated matter as defined in paragraph 8. In the event of such a request, the parties agree to follow the procedures in paragraphs 8 through 15 below. Alternatively, EPA and Respondent may agree in writing to waive formal negotiations as outlined above and initiate mediation as outlined below. [NOTE: In this event the references to mediation request should be changed to "the initiation of mediation".]

8. For purposes of this section, Mediated Matters include: (1) the need for additional work beyond that required in Section \_\_\_\_: Work to be Performed, costing an additional [\$] (\$250,000 recommended); (2) approval of the final RFI report or CMS workplan; or (3) the existence of a force majeure event pursuant to Section \_\_\_\_: Force Majeure. Respondent may invoke the mediation process no more than [number] times during the pendency of this Order.

9. The parties agree that they will share equitably the costs of mediation. The EPA Project Coordinator shall notify Respondent as to the extent of EPA's ability to share equitably the costs of mediation within 5 days of EPA's receipt of Respondent's request for mediation or within 5 days of the date of the parties' agreement to mediate pursuant to paragraph 7 above. This time period may be extended by the EPA Project Coordinator if necessary to determine the availability of EPA funds to share the costs of mediation. EPA's ability to share the costs of mediation will be determined by EPA in its sole discretion and shall not be subject to dispute resolution or judicial review. Upon written notice by the EPA Project Coordinator to Respondent that EPA cannot equitably share the costs of mediation, the EPA Dispute Decision shall be incorporated into and become an enforceable element of this Order, but will not be considered final Agency action for purposes of judicial review. If EPA notifies Respondent that it can equitably share the expenses of mediation then the Parties shall follow the procedures below.

10. If the parties use the Dispute Resolution Support Services contract they agree to select a mediator(s) in accordance with the following procedures:

(a) Upon receipt of Respondent's request for mediation or the written agreement to mediate pursuant to paragraph 7 above, and following EPA's notification that it can share the expenses of mediation, the parties will be forwarded a list of mediators ("Mediator Selection List") available through the Dispute Resolution Support Services Contract managed by EPA.

(b) Within 5 days of Respondent's receipt of the Mediator Selection List, the parties shall simultaneously provide each other with a letter ("Mediator Nomination Letter") which shall contain the names of 5 persons from the Mediator Selection List nominated to serve as mediators for the Mediated Matter in dispute.

(c) The mediators nominated by each party must not have any past, present, or planned future business relationships with the parties, other than for mediation activities. They

must also agree to the terms and conditions for mediation contained in this Order and enter into an agreement for the provision of ADR services with the parties. All persons nominated shall be provided with a copy of the Order by the nominating party. Any conflicts of interest or refusal to comply with paragraphs 13 and 14 of this section shall automatically result in rejection of said nominee.

(d) Within 5 days of the receipt of the Mediation Nomination Letters, each party shall advise the other in writing of acceptable nominees. All acceptable nominees who are not automatically rejected pursuant to subparagraph (c) above, shall comprise the Mediator Nomination List. The parties shall select a mediator from the Mediator Nomination List and enter into an agreement for mediation services with such mediator through negotiation and by mutual consent within 20 days of the receipt of the Mediation Nomination Letters.

Alternatively, the parties may select a mediator from any other source of mediators. In this event, the provisions of paragraph 10(c) shall continue in effect.

11. The parties agree that the time period for mediation of the matter in dispute is limited to 30 days from the date the parties sign an agreement with a Mediator. This time period may be extended by EPA.

12. If for any reason the parties are unable to select a mediator, or are unable to approve and execute an agreement for mediation services, or are unable to complete mediation, within the time periods for those activities specified in paragraphs 10 and 11 above, EPA's Dispute Decision shall be incorporated into and shall become an enforceable element of this Order upon the conclusion of such time period, but will not be considered final Agency action for purposes of judicial review.

13. Unless the parties agree otherwise in writing, the mediator's role shall be limited to facilitating negotiation between the parties. Mediation sessions shall not be recorded verbatim and no formal minutes or transcripts shall be maintained. Unless the parties agree otherwise, the mediator shall make no written findings or recommendations.

14. Meetings or conferences with the mediator shall be treated as confidential settlement negotiations. Statements made by any person during any such meetings or conferences shall be deemed to have been made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence and applicable state rules of evidence, and shall not be offered in evidence in any proceeding by any person. The mediator will be disqualified as a witness, consultant or expert in any pending or future action relating to the subject matter of the mediation, including those between persons not a party to the mediation. If Respondent fails to comply with the mediation confidentiality requirements of this section, then it will forfeit its rights, if any remain, under this Order to request future mediation and may be responsible for stipulated penalties for such breach as provided in Section \_\_: Delay in Performance/Stipulated Penalties, Paragraph 1 (d).

15. Any agreement to resolve the dispute reached by the parties pursuant to this section shall be in writing and shall be signed by both parties. The written agreement shall specify which provisions of the EPA Dispute Decision are superseded and/or modified. If the written agreement is not signed by Respondent within 7 days after the resolution of the dispute it shall be null and void and the EPA Dispute Decision shall be incorporated into and become an enforceable element of this Order, but will not be considered final Agency action for purposes of judicial review.

Guidance

Alternative Dispute Resolution

Consent Order

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December 15, 1993

The use of ADR in enforcement actions has been encouraged by the Agency since issuance of guidance on this subject on August 14, 1987 by Administrator Lee Thomas. That guidance identified characteristics of suitable cases for ADR, approval procedures for ADR cases and procedures for selection of a third party neutral. On June 19, 1990 Deputy Administrator Hank Habicht issued a policy statement strongly supporting the use of ADR techniques. Then, in November 1990, Congress passed the Administrative Dispute Resolution Act, 5 U.S.C. § 581 (Supp. 1990) which fosters the use of ADR in federal litigation. Finally, the Executive Order on Civil Justice Reform, No. 12778, 56 Fed. Reg. 55,195 (October 23, 1991) encourages the use of ADR techniques in, inter alia, all federal disputes. In August 1992 the Department of Justice issued "Guidance on the Use of Alternative Dispute Resolution for Litigation in the Federal Courts".

It is important to note that the ADR Act and the Executive Order limit the Agency's ability to enter binding arbitration because the Agency can not delegate its decision making authority. Thus, binding arbitration is permissible as long as all parties consent and the Agency is permitted to review and reject the decision.

The sample language included in this guidance provides for the use of non-binding mediation, one of several dispute resolution techniques of non-binding assisted negotiation. Non-binding third-party mediation (NBTPM) was chosen for the model order because of its relative simplicity, its administrative expediency, and its non-binding nature. In mediation, a third party neutral is used to facilitate settlement negotiations between the parties. He/she acts as a catalyst and facilitator of communications between the parties, but not a judge of the position taken by the parties during the course of negotiations. Regions may choose a different non-binding ADR technique for facility specific reasons.

Fact-finding, a technique which entails the investigation of specified issues by a neutral with subject matter expertise, is another ADR mechanism which may be useful in corrective action orders to narrow factual or technical issues in dispute.

ADR has been used in a few RCRA §3008(h) Consent Orders, such as: Kimberly-Clark (Reg. 4, April 1989), Safety-Kleen (Reg. 5, October 1988) and Texaco Refining and Marketing (Reg. 8, September 1989).

In NBTPM, as it pertains to RCRA §3008(h) actions, certain principles should be followed. These are:

- (a) The third-party must be neutral;
- (b) The proceedings, discussions and third-party recommendations should be kept confidential;
- (c) The third-party may not issue a binding decision;
- (d) The Agency should retain the authority to make the ultimate decision on disputed matters;
- (e) There should be a time limit on the length of the ADR process;
- (f) The use of the alternate technique must be conditioned on availability of funds for EPA to pay an equitable share of the costs of the ADR process;

The rationale for many of these principles in the Order are discussed below.

#### Subject Matter and Frequency of Mediation

EPA is concerned that use of any formal dispute resolution technique, even ADR techniques, may impede progress with implementation of corrective measures if it is invoked too frequently. Consequently, the Order encourages informal negotiations, limits the frequency and subject matter of issues potentially subject to NBTPM, and sets a limit on the period of time for selection of a mediator and actual mediation.

The limited subject matters which may be subject to ADR were chosen based on experience with concerns raised by Respondents when negotiating Orders, the frequency with which these subjects are raised as a major issue in negotiations, and the potential these subjects have to significantly increase the costs incurred by a Respondent. Other subject matter areas may be substituted for these by each Region based on facility-specific considerations.

As important as the subject matter limitations is a numeric limitation. The Order allows the Region discretion to set the number of times NBTPM may be requested during the life of the Order. Three times would allow a Respondent to invoke ADR once for each identified Mediated Matter subject to ADR; it is not so frequent as to significantly impede progress with implementation of the corrective measures; and it is likely to be within the Agency's ADR budget and thus likely to be used. Regions may alter this guideline if experience suggests that corrective measures are likely to be significantly impeded or expedited by the use of ADR.

#### Cost of Mediation

The distribution of costs for NBTPM must be shared equitably between EPA and Respondent so as to ensure neutrality of the mediator, avoid the appearance of bias; and ensure compliance with the Miscellaneous Receipts Act. Since the need for a mediator in many instances may not occur until years after the Order is signed, and the Agency cannot commit to reserving money in the future for a mediator, it is also important that the use of any ADR technique be contingent on the availability of funds for ADR. To address these issues, the Order preconditions use of NBTPM on the availability of federal money for the mediation at the time the need for the mediation arises and requires an equitable sharing of the costs of mediation between EPA and Respondent. If these conditions are not met then the dispute would proceed as all other formal disputes. Moreover, the Agency's decision on the availability of funds for ADR is not subject to dispute resolution.

#### Selection of Mediator

The Agency presently has a Dispute Resolution Support Services contract (#68-W1-0014) through which parties can have access to a large pool of qualified environmental mediators. To facilitate implementation the mediator chosen may be selected from the universe of mediators who are available under the EPA contract. Alternatively, the parties may select a mediator from any other source. Any mediator selected will be required to enter into a short and simple agreement with Respondent and EPA. Such agreement will govern the terms of his/her engagement, the mediator's role and responsibilities, confidentiality, and any other provisions agreed to by the parties. The lead attorney for EPA has the authority to sign this agreement with Respondent and the mediator.

#### Confidentiality

To foster open communications between the parties during mediation it is important that the discussions not be used by either party or a third party at a later time. Consequently, the Order explicitly states that the proceedings will not be recorded and shall be treated as confidential. The ADR Act, 5 U.S.C. §584, contains strict prohibitions on disclosure of any confidential information. Communications arising from ADR proceedings should not be disclosed to third parties or a court without the consent of the parties. Furthermore, the mediator is also disqualified to act as a witness, consultant, expert, or mediator in any pending or future action



related to the subject matter of the mediation. The agreement with the mediator should confirm these same restrictions.

For further information on implementation of ADR mechanisms and the availability of dispute resolution services, EPA personnel should call David C. Batson, EPA's ADR Liaison, Office of Enforcement, 202-260-8173, Deborah Dalton, Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation, Office of Policy, Planning and Evaluation, 202-260-5495, or Ellen Kandell, RCRA Enforcement Division, Office of Waste Programs Enforcement, 202-260-9315. Decisions on the use of ADR in specific orders will be left to the Regions.

#### XVIII. FORCE MAJEURE AND EXCUSABLE DELAY

1. Force majeure, for purposes of this Order, is defined as any event arising from causes not foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force majeure does not include increased costs of the work to be performed under this Order, financial inability to complete the work, work stoppages or other labor disputes.

2. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent shall contact by telephone and communicate orally with EPA's Project Coordinator or, in his or her absence, EPA's alternative Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region [Number], within [48] hours of when Respondent first knew or should have known that the event might cause a delay. If Respondent wishes to claim a force majeure event, then within [5] days thereafter, Respondent shall provide to EPA in writing the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or the environment. Respondent shall include with any notice all available documentation supporting its claim, if any, that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that

event. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

3. If EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this Order that is affected by the force majeure event will be extended by EPA for such time as EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.

4. If EPA disagrees with Respondent's assertion of a force majeure event, EPA will notify Respondent in writing and Respondent may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section \_\_: Dispute Resolution. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

#### Guidance

The force majeure language contained herein is derived largely from the model CERCLA RD/RA decree (June 21, 1991). The revised model language adopts the concept of "best efforts" from the CERCLA decree to define force majeure. "Best efforts" is meant to require Respondent to meet a high standard of performance before it may be excused from complying with certain schedules or tasks set forth in the Order. In Re Heard, 6 B.R. 876 (U.S. Bkrtcy Ct., W.D. Ky. 1980) the Court stated "'best efforts' imposes a legal duty of performance more demanding than mere competence or due diligence.... If the duty of best efforts is owed, it must be performed even at a loss and it involves a stricter standard of performance than good faith." The term "best efforts" has been interpreted in various court decisions, and commonly it has been used in contractual documents and consent decrees. In the context of the Order, the definition of "best efforts" enumerates certain specific actions that Respondent must take to meet the Order's requirements: (1) anticipate any potential force majeure event before, during, and after its occurrence and (2) minimize any delay or prevention of performance.

The phrase "causes not foreseen" used in defining force majeure events under the Order places the burden on Respondent to take reasonable steps to identify and anticipate situations which could cause a delay in the performance of work. It also places a burden on Respondent to exercise due care to avoid such situations or mitigate their consequences so as to ensure all work

is performed in a timely and adequate manner. The Agency expects events that fall under the definition of force majeure to be extremely rare.

To avoid time-consuming arguments during negotiations regarding specific examples of what does and does not constitute force majeure events, the model order lists only four examples. In those circumstances where the Agency finds it necessary to provide additional specific examples, these should be limited to the following: extraordinary weather events; natural disasters, national emergencies; delays in obtaining access to property not owned or controlled by Respondent despite timely, best efforts to obtain such access; and delays in obtaining any required approval or permit from EPA or other entities that result despite Respondent's complete, timely, and appropriate submission of all information and documentation required for approval or applications for permits within a time frame that would permit the work to proceed in a manner contemplated by the schedule in the Order.

#### XIX. RESERVATION OF RIGHTS

[NOTE: To ensure abatement of the threats posed by facility conditions, EPA's right to take action in the future or to require Respondent to take appropriate future action must be preserved. For example, the Respondent may satisfactorily perform the actions required of it by the Order, but these actions may prove ultimately to be insufficient to remedy the problem. To address such instances, the Agency must reserve its right to institute legal action.]

1. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under §3008(h)(2) of RCRA, 42 U.S.C. §6928(h)(2). This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

2. EPA reserves the right to disapprove of work performed by Respondent pursuant to this Order and to order that Respondent perform additional tasks.

3. EPA reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health and/or the environment. EPA may exercise its authority under CERCLA to undertake response actions at any time. In any event, EPA reserves its right to seek reimbursement from Respondent for costs incurred by the United States. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by EPA.

4. If EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work ordered, EPA may order

Respondent to stop further implementation of this Order for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.

5. This Order is not intended to be nor shall it be construed to be a permit. Further, the parties acknowledge and agree that EPA's approval of the SOW or any final workplan does not constitute a warranty or representation that the SOW or workplans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State, or federal laws and regulations.

[NOTE: The following paragraph should be considered in appropriate cases to supplement the other paragraphs in this section.]

#. Respondent does not admit any of the factual or legal determinations made by the EPA and reserves all rights and defenses it may have regarding liability or responsibility for conditions at the facility, with the exception of its right to contest EPA's jurisdiction to issue or enforce this Order and its right to contest the terms of this Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law.

6. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, the Director of the Waste Management Division, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order.

7. In any action brought by EPA for a violation of this Order, Respondent shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with law.

8. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

#### XX. OTHER CLAIMS

Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or

relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility. The Respondent waives any claims or demands for compensation or payment under §§106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. §9507 for, or arising out of, any activity performed or expense incurred pursuant to this Order. Additionally, this Order does not constitute any decision on preauthorization of funds under §111(a)(2) of CERCLA.

#### XXI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### XXII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

[NOTE: Some companies have raised concerns regarding the scope of the indemnification clause. The language in brackets, which should be considered in appropriate cases, is intended to address this concern.]

Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising [solely] from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts. [Respondent shall not be responsible for indemnifying the EPA for claims or causes of action solely from or on account of acts or omissions of EPA.]

#### XXIII. FINANCIAL RESPONSIBILITY

[NOTE: To ensure that required corrective measures are successfully completed by Respondent, EPA may require the establishment of some form of financial assurance. If Respondent proves unable or unwilling to undertake the actions prescribed in the Order, the Agency will then have access to funds with which to undertake the required action. The financial assurance may take one or more of several forms depending on a number of factors, including the reliability and the financial security of Respondent. These forms of financial assurance may include, but are not limited to, a performance or surety bond, liability insurance, an escrow performance guarantee account, letter of credit or a trust fund. Regions may use the proposed 1986 regulations, 51 Fed. Reg. 37854, October 24, 1986 as guidance.]

#### XXIV. REIMBURSEMENT OF OVERSIGHT COSTS

(RESERVED)

#### XXV. MODIFICATION

1. This Order may only be modified by mutual agreement of EPA and Respondent. Any agreed modifications shall be in writing, be signed by both parties, shall have as their effective date the date on which they are signed by EPA, and shall be incorporated into this Order.

2. Any requests for a compliance date modification or revision of an approved workplan requirement must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification or workplan revision. EPA has no obligation to approve such requests, but if it does so, such approval must be in writing. Any approved compliance date or workplan modification shall be incorporated by reference into the Order.

3. This section shall not apply to any EPA dispute decision, EPA approved report, workplan, specification and schedule which are deemed to be incorporated into this Order.

#### XXVI. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

#### XXVII. TERMINATION AND SATISFACTION

The provisions of this Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment"). EPA will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. Respondent's execution of the Acknowledgment will affirm Respondent's continuing obligation (1) to preserve all records as required in Section \_\_: Record Preservation and (2) to recognize EPA's reservation of rights as required in Section \_\_: Reservation of Rights, after all other requirements of the Order are satisfied.

## Guidance

The acknowledgment document given below must first be sent to Respondent for signature and then returned to EPA. EPA should then sign the Acknowledgement and return a completed copy to Respondent.

### ACKNOWLEDGMENT OF TERMINATION and AGREEMENT TO RECORD PRESERVATION AND RESERVATION OF RIGHTS

1. The United States Environmental Protection Agency ("EPA") agrees and acknowledges that the terms of Order RCRA-\_\_\_\_-\_\_\_\_ entered into by Respondent and EPA on \_\_\_\_\_, 19\_\_\_\_ ("the Order"), including any additional tasks determined by EPA to have been required pursuant to the Order, but excluding Section \_\_\_\_: Record Preservation, have been satisfactorily completed based upon the information presently available to EPA.

2. Respondent agrees and acknowledges that the terms of Section \_\_\_\_: Record Preservation remain in effect until \_\_\_\_\_. [Insert date 6 years after termination of Order.]

3. Respondent agrees and acknowledges that Respondent's completion of the terms of the Order does not limit or otherwise preclude EPA from taking additional enforcement action pursuant to §3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(h), or other available legal authorities, should EPA determine that such actions are warranted.

4. Respondent agrees and acknowledges that Respondent's completion of the terms of the Order does not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State, or federal laws and regulations.

IT IS SO AGREED AND ACKNOWLEDGED:

Date: \_\_\_\_\_ By: \_\_\_\_\_  
[NAME]  
[TITLE]  
[RESPONDENT]

Date: \_\_\_\_\_ By: \_\_\_\_\_  
[NAME]  
[REGIONAL ADMINISTRATOR OR DELEGATEE]  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION [NUMBER]

### XXVIII. SURVIVABILITY/PERMIT INTEGRATION

Except as otherwise expressly provided in this section, this Order shall survive the issuance or denial of a RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondent shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit. If the Facility is issued a

RCRA permit and that permit expressly incorporates all or a part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondent may request a modification of this Order and shall, with EPA approval, be relieved of liability under this Order for those specific obligations.

#### XXIX. SUBMITTAL SUMMARY

The following is a summary of the major deadlines required by this Order. To the extent that this section is inconsistent with any other section of the Order, such other section and not this summary shall apply.

<u>Section</u>	<u>Action</u>	<u>Due Date</u>
VII	Designate a Project Coordinator, and notify EPA in writing of the Project Coordinator it has selected.	Within [X] days of the effective date of this Order.
VIII	Submit Interim Measures Workplan and Health and Safety Plan.	[X] days from effective date of Order.
VIII	Submit Current Conditions Report, Pre-Investigation Evaluation of Corrective Measure Technologies Report, RFI Workplan.	[X] days from effective date of Order.
VIII	Submit CMS Workplan	[X] days from approval of final RFI report.
VIII	Notify EPA orally and in writing of any new or additional information concerning a current or potential threat.	Orally within 48 hours of discovery and in writing, within [X] days.
VIII	Provide [insert, as appropriate: RFI, CMS, or other] report(s) to EPA.	According to the schedule contained in the workplan approved by EPA.
X	Submit progress reports.	Specify frequency and due date of first report.
X	Implement approved workplans.	Upon receipt of approval according to schedule



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|     |  | contained in<br>workplan.                                  |
| X   | Notify EPA in writing of<br>any contractor(s) or<br>consultant(s).       | Within [X] days of<br>the effective date<br>of this Order. |
| XI  | Inform EPA Project<br>Coordinator which<br>laboratories will be<br>used. | Identify in<br>applicable workplan.                        |
| XII | Notify EPA in writing<br>before engaging in any<br>field activities.     | At least [X] days<br>before activities<br>commence.        |

XXX. EFFECTIVE DATE

The effective date of this Order shall be [X] days after  
Respondent has received notice from EPA that EPA has signed the  
Order.

IT IS SO AGREED:

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

[NAME]  
[TITLE]  
[RESPONDENT]

IT IS SO ORDERED:

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

[NAME]  
[REGIONAL ADMINISTRATOR OR  
DELEGATEE]  
U. S. ENVIRONMENTAL PROTECTION  
AGENCY REGION [NUMBER]

#### A. REFERENCES

The following list comprises additional guidance documents and other information which may be useful in implementing a RCRA §3008(h) Order. This list does not include every guidance document pertaining to work performed under a §3008(h) Order. Documents are organized according to the relevant section of the Order. Contacts for additional information are included at the end of this list.

#### MODEL ORDER:

##### Section VIII. Work to be Performed

"Handbook: Stabilization Technologies for RCRA Corrective Actions," EPA/625/6-91/026, August 1991.

"RCRA Ground-Water Monitoring: Draft Technical Guidance," EPA/530-R-93-001, November 1992.

"Interim Final RCRA Facility Investigation (RFI) Guidance," Volumes I - IV, EPA/530/SW-89-031, May 1989.

"RCRA Ground-water Monitoring Technical Enforcement Guidance Document (TEGD)," OSWER Directive 9950.1, September 1986.

Ground-Water Monitoring: Draft Technical Guidance, EPA/530-R-93-001, November 1992.

"Handbook: Ground Water," Volumes I and II, EPA/625/6-90/016 (a&b), September 1990 and July 1991.

"Ground-Water Modeling: An Overview and Status Report," EPA/600/2-89/028, December 1988.

"Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities," Addendum to Interim Final Guidance, EPA/530-R-93-003, July 1992; Interim Final EPA/530/SW-89/026, April 1989.

"Data Quality Objectives for Remedial Response Activities," EPA/540/G-87/003 & 004, OSWER Directive 9335.0-7B, March 1987.

"Human Health Evaluation Manual, Supplemental Guidance: Standard Default Exposure Factors," OSWER Directive 9285.6-03, March 25, 1991.

"Risk Assessment Guidance for Superfund, Volume I: Human Health Evaluation Manual (Part A)," Interim Final, EPA/540/1-89/002, December 1989.

"Risk Assessment Guidance for Superfund, Volume II: Environmental Evaluation Manual," Interim Final, EPA/540/1-89/001, March 1989.

"Final Guidance for Data Useability in Risk Assessment," (Parts A & B), OSWER Directive 9285.7-09A, April 1992.

"Ecological Assessment of Hazardous Waste Sites: A Field and Laboratory Reference Document," EPA 600/3-89/013, March 1989.

"A Compendium of Superfund Field Operations Methods," Two Volumes, EPA/540/P-87/001a&b, OSWER Directive 9355.0-14, August 1987.

"Technical Guidance Document: Construction Quality Assurance for Hazardous Waste Land Disposal Facilities," EPA 530/SW-86/031, OSWER Directive 9472.003, October 1986.

"Corrective Measures for Releases to Ground Water from SWMUs," Draft Final, EPA/530-SW-88-020, March 1985.

"Technical Guidance for Corrective Measures--Determining Appropriate Technology and Response for Air Releases," Draft Final, EPA/530-SW-88-021, March 1985.

"Air/Superfund National Technical Guidance Study Series," Volumes I-IV, EPA 450/1-89-001,002,003,004 (1989 and 1990).

"Corrective Measures for Releases to Soil from SWMUs," Draft F EPA/530-SW-88-022, March 1985.

"Technical Guidance for Corrective Measures -- Subsurface Gas," EPA/530-SW-88-023, March 1985.

"Guide for Conducting Treatability Studies under CERCLA," Interim Final, EPA/540/2-89/058.

"Selected Alternative and Innovative Treatment Technologies for Corrective Action and Site Remediation," EPA/540/8-91/092, 1991.

"Synopsis of Federal Demonstrations of Innovative Site Remediation Technologies," EPA/540/8-91/009, May 1991.

"Bibliography of Federal Reports and Publications Describing Alternative and Innovative Treatment Technologies for Corrective Action and Site Remediation," EPA/540/8-91/007, May 1991.

Technical Guidance Document: Final Covers on Hazardous Waste Landfills and Surface Impoundments," EPA/530/SW-89/047, July 1989.

"Handbook on In-Situ Treatment of Hazardous Waste-Contaminated Soils," EPA/540/2-90/002, January 1990.

"Stabilization/Solidification for CERCLA and RCRA Wastes,"  
EPA/625/6-89/022, May 1989.

"Health and Safety Requirements of Employees Employed in Field  
Activities," EPA Order 1440.2, July 12, 1981.

Section XI. Quality Assurance

"Interim Guidelines and Specifications for Preparing Quality  
Assurance Project Plans," QAMS-005/80, December 29, 1980.

**GENERAL INFORMATION:**

"OSWER Directives - System Catalog," OSWER Directive 9013.15-3D,  
March 1992. (Provides a list of OSWER Directives published  
through March 1991.)

"Technical Support Services for Superfund Site Remediation and  
RCRA Corrective Action" (third edition), EPA/540/8-91/091, March  
1992.

"Accessing Federal Data Bases for Contaminated Site Clean-Up  
Technologies," EPA/540/8-91/008, May 1991.

"Memorandum on the Use of Supplemental Environmental Projects,  
Amendment to GM 22," James M. Strock, February 12, 1991.

**USEFUL TELEPHONE NUMBERS:**

RCRA/CERCLA/UST Hotline (800) 424-9346

EPA's Office of Research and Development publishes occasional  
ground water and engineering issue papers. For information  
contact:

ORD Publications Office, Center for Environmental Research  
Information (CERI), (513) 569-7562

National Technical Information Services (NTIS) (703) 487-4650  
(800) 553-6847